Remarks

Claims 1-21 were pending in the application. Claims 1-21 have been canceled by this amendment, claims 22-31 have been added.

Claims 1-21 were rejected under 35 USC 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In light of the cancellation of these claims, withdrawal of this objection is requested.

New claims 22-31 may clarify the issues raised in the rejection under 35 USC 112. The network device has *a converter to receive a packet data stream intended for a packet domain and to convert the packet data stream into an altered data stream intended for transmission through a public switched telephone network.* The network device also has a controller to *establish a connection through the public switched telephone network with at least one other network device using the altered data stream,* connecting the network device to at least one other network device. The controller then send *signals through the converter in the altered data stream identifying the network device as a packet device that can receive packet data.* The controller uses the PSTN data stream that has been converted from the packet stream to identify itself to other devices in the connection as a packet device. The control then determines, *using signals received from one of the other network devices, whether the other network device is a packet device that can receive packet data.* If the other device is a packet device, the controller then sends *the packet data stream to the other network device.* If the other device is not a packet device, the controller then sends *the altered data stream to the other network device, if the network device determines that the other network device is not a packet device and cannot receive packet data.*

As these claims are new, no prior art citation addresses them. However, a discussion of the previously cited art may be helpful in forwarding the progress of this application. Previous claims 1-6, 9-11 and 17-21 are rejected under 35 USC 102(e) as being anticipated by Bhagavath et al. (US Patent No. 6,374,288).

It should be noted that the language of the office action inadvertently misquoted the language of previous claim 1. The quotations of previous claim 1 read, "send the packet data stream across the public switched transmission network to the at least one other network device if it is determined that the at least one other network device converts the altered data stream to the packet data stream," and, "send the altered data stream across the public switched transmission network to the at least one other network device, if it is determined that the at least one other network device can convert the altered data stream to the packet data stream..."

However, the language of previous claim 1 actually read, "send the packet data stream across the public switched transmission network to the at least one other network device, if is it determined that the at least one other network device is capable of converting the altered data stream to the packet data stream," and "send the altered data stream across the public switched transmission network to the at least one other network device, if it is determined that the at least one other network device *is not capable of converting* the altered data stream to the packet data stream."

The office action relied upon the modem 102 disclosed in Bhagavath, et. al., for both of these elements. In Bhagavath, however, both the modem 102 and the modem 104 are xDSL devices, and the line is a DSL device. There is no need for determining whether the devices are packet or 'nonpacket' devices, as they are both DSL. The only determination that occurs in the system disclosed in Bhagavath is the rate determination to be used between the two DSL devices.

Bhagavath does not teach a controller to *determine, using signals received from one of the other network devices, whether the other network device is a packet device that can receive packet data*...The devices 'know' each other at least to the point that they are both DSL devices.

Bhagavath does not teach an initial connection through the modems that converts the data and then changes to the modems not converting the data if the device on the other end doesn't require the conversion. Indeed, as stated in the office action, "modem 102 receives TCP/IP/Ethernet data packets from the customer, which must be converted to and from xDSL format..." All data going through the modem is converted, whether the other end device would need it or not. The reference does not teach a controller to "*send the packet data stream to the other network device, if the network device determines that the other network device is a packet device that can receive packet data...*" and, *send the altered data stream to the other network device, if the network device determines that the other network device is not a packet device and cannot receive packet data.* The modem does one or the other in Bhagavath, as the modem works in a homogenous network and knows the other devices are all DSL devices.
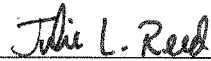
As other references cited rely upon a combination with Bhagavath, these combinations also do not show, teach or suggest the subject matter of the new claims 22-31.

No new matter has been added by this amendment. Allowance of all claims is requested. The Examiner is encouraged to telephone the undersigned at (503) 222-3613 if it appears that an interview would be helpful in advancing the case.

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Respectfully submitted,

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